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November 20, 2001

VIA HAND DELIVERY

John Robertus, Executive Officer
Stacey Baczkowski
California Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

2001 NOV 20 A 11:19

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

Re: Tentative Order No. 2001-322, Waste Discharge Requirements and Section 401 Certification for the Villages of La Costa Project

Dear Mr. Robertus and Ms. Baczkowski:

This letter is submitted on behalf of the San Diego BayKeeper, Canyons Network, Sierra Club, Center for Biological Diversity, and San Diego Chapter of the Surfrider Foundation to provide comments concerning Tentative Order No. 2001-322 ("Tentative Order") for the Villages of La Costa Project in Carlsbad, California ("Project").¹

I. The Project Fails to Meet the Requirements for Section 401 Certification

A. The Project Will Adversely Impact Beneficial Uses and Water Quality Objectives

"Regional Board certification is dependent upon assurance that the project will not reduce water quality below applicable standards as defined by the [federal] Clean Water Act (i.e., the water quality objectives established and the beneficial uses which have been designated for the surface waters)." Water Quality Control Plan for the San Diego Basin ("San Diego Basin Plan") at 4-19. See 33 U.S.C. § 1341(a); Calif. Water Code § 13263(a).

The Project will not protect beneficial uses and water quality objectives. The Project's Final Environmental Impact Report ("EIR"), recently approved by the City of Carlsbad, acknowledged significant cumulative impacts to surface water. EIR at 4.11-31. "Development of the Proposed Project site would result in an increase in the cumulative amounts of urban pollutants entering San Marcos Creek and Batiquitos Lagoon over existing conditions." *Id.* at 4.11-28. "Implementation of the Proposed Project, in combination with other development projects occurring in the area, would result in cumulative urban pollutant impacts that are unmitigable." *Id.* As one commenter on the

¹ This Board's notice of the application was sent to our prior address. Please note the correct address, listed at the top of this letter.

EIR noted, the increased impervious surfaces associated with the Project will lead to greater pollutant loads into the area's water bodies. *See Id.* Comments ## 163 & 164.

Furthermore, the Tentative Order's proposed reliance upon stormwater permitting requirements will not be adequate to address these impacts. The Project's EIR presumed compliance with stormwater requirements and the implementation of aggressive stormwater controls, yet still determined a significant impact. EIR at 4.11-29 to 31.² Even with mitigation, the EIR admits that cumulative impacts to surface water would be significant. *Id.* at 4.11-31. There is no support for the Tentative Order's conclusion that existing stormwater-permitting obligations will adequately protect beneficial uses and water quality objectives from this Project's adverse impacts.

To make matters worse, the Tentative Order merely requires that the Project applicant submit a Water Quality Plan in the future. Tentative Order § C(4). No specific measures, and certainly no measures that go above and beyond those discussed in the EIR, are required. The Project does not meet the standards; it will not protect beneficial uses and water quality objectives.

B. The Board Has Not Addressed All Applicable Beneficial Uses

The fact sheet accompanying the Tentative Order is misleading and ultimately incorrect. Beneficial uses for Batiquitos Lagoon are broader than those discussed in the Fact Sheet, and include Preservation of Biological Habitats of Special Significance (BIOL), Estuarine Habitat (EST), Rare, Threatened or Endangered Species (RARE), Marine Habitat (MAR), and Migration of Aquatic Organisms (MIGR).³ San Diego Basin Plan at 2-47. The EIR acknowledges that drainage flows to San Marcos Creek and Batiquitos Lagoon. EIR § 4.11. The EIR also acknowledges that "[d]evelopment of the Proposed Project site would result in an increase in the cumulative amounts of urban pollutants entering San Marcos Creek and Batiquitos Lagoon over existing conditions." EIR at 4.11-28. Because the Project's discharges up gradient from Batiquitos Lagoon will affect the lagoon's water quality, these beneficial uses must be addressed.⁴

Additionally, there are three potential beneficial uses for groundwater in the Batiquitos HSA. San Diego Basin Plan at 2-54. While the boundaries of these uses do

² Among others, the EIR adopted the following mitigation measure: "The Proposed Project shall design and incorporate the current Best Management Practices and Best Available Technologies ... available at that time for pollution control and erosion/sediment control." EIR at 4.11-30.

³ Batiquitos Lagoon is host to numerous species, many of whom are threatened or endangered as a result of the impacts from developments like this Project.

⁴ While Appendix Q to the EIR, titled "Water Quality Impacts ... on Batiquitos Lagoon," concluded that the Project would have a negligible impact when compared to standards established by studies of dredging the lagoon, it acknowledged that the Project will develop approximately 5% of the lagoon's total watershed. EIR, App. Q at 9.

not correspond exactly with the Project's boundary, drainage of the Project will be such that groundwaters within the Batiquitos HSA are likely to be affected. These potential beneficial uses must be addressed.

C. The Project is Not Consistent with the Wetlands Conservation Policy

The California Wetlands Conservation Policy mandates "no overall net loss and ... a long-term net gain in the quantity, quality, and performance of wetlands acreage and values in California." San Diego Basin Plan at 5-9. The Project will impact, directly and permanently, almost 7 ½ acres of wetlands, yet there is no assurance that the Wetlands Conservation Policy requirements will be met.

Accordingly, Project does not meet the requirements for a Section 401 certification.⁵

II. The EIR for the Project is Inadequate

The EIR fails to provide the public and decision makers with a thorough and accurate description of the direct, indirect, and cumulative impacts of the proposed project and of the other alternatives considered, and fails to suggest adequate mitigation even for the impacts that have been disclosed. Several critical comments to the City of Carlsbad concerning the EIR reveal numerous inadequacies.⁶

The EIR is inadequate to satisfy this Board's California Environmental Quality Act ("CEQA") obligations.

III. Conclusion

The San Diego BayKeeper, Canyons Network, Sierra Club, Center for Biological Diversity, and San Diego Chapter of the Surfrider Foundation request that the Regional Water Quality Control Board deny Section 401 certification.

⁵ For similar reasons, the Project will not meet the Section 404 requirements mandated for U.S. Army Corps consideration. It has not been demonstrated that the Project is the Least Environmentally Damaging Practicable Alternative ("LEDPA") as required by 40 C.F.R. § 230.10(a), nor has it been demonstrated that the project will not contribute to the violation of any California state water quality standard, violate any toxic effluent standard under 33 C.F.R. § 1317, or jeopardize the continued existence of any federally listed species or adversely modify critical habitat under 40 C.F.R. § 230.10(b). It also has not been demonstrated that the project will not cause significant degradation to waters of the U.S. as required by 40 C.F.R. § 230.10(c).

⁶ Enclosed are comment letters sent subsequent to the preparation of the Project's final EIR, which are hereby incorporated by reference. These letters identify additional inadequacies with the EIR and the Project.

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If you have a question or need additional information, please call me. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. DeLano', written in a cursive style.

Everett DeLano, Esq.

Enclosures: Letters from Everett DeLano to Michael Holzmiller and Don Neu dated August 29, October 15, October 16 and October 22, 2001

cc (w/o enclosures):

Terry Dean, U.S. Army Corps of Engineers